IN THE COURT OF APPEALS OF TENNESSEE
AT NASHVILLE
Assigned on Briefs December 4, 2007

IN RE: J.B.W.

Appeal from the Juvenile Court for Montgomery County
No. 143-80 Ray Grimes, Judge

No. M2007-02541-COA-R9-CV - Filed on December 27, 2007

This application for an interlocutory appeal concerns whether the Juvenile Court for Montgomery County has jurisdiction over and is the proper forum to consider a parentage and child support action. The putative father is a resident of Georgia. The mother and child resided in Tennessee when the petition was filed, but moved to Georgia shortly thereafter. We concur with the trial court that this is an appropriate case for an interlocutory appeal pursuant to Tenn. R. App. P. 9.[1] Because the father made a general appearance in open court, we reverse the trial court's determination that it lacked personal jurisdiction over the father. However, we affirm the trial court's determination that, because both the parties and the child now reside in Georgia, Tennessee is an inconvenient forum and the action should be brought in Georgia.

Tenn. R. App. P. 3 Appeal as of Right; Judgment of the Juvenile Court
Reversed in Part, Affirmed in Part

PATRICIA J. COTTRELL, P.J., M.S., delivered the opinion of the court, in which FRANK CLEMENT, JR. and ANDY D. BENNETT, JJ., joined.

Gregory D. Smith, Clarksville, Tennessee, for the appellant, K.S.

Christopher Wayne Barber, Stone Mountain, Georgia, for the appellee, W.L.W.

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[1]The Tenn. R. App. P. 9 application and supporting documents fully set forth the parties' positions and the material facts. Therefore, pursuant to Tenn. R. App. P. 2, we suspend the application of Tenn. R. App. P. 24, 25 and 29, and find oral argument to be unnecessary pursuant to Tenn. R. App. P. 35(c). *See Hammock v. Sumner Co.*, No. 01A01-9710-CV-00600, 1997 WL 749461 (Tenn. Ct. App. Dec. 5, 1997) (No Tenn. R. App. P. 11 application filed).

MEMORANDUM OPINION[2]

I.

J.B.W. was born out of wedlock in June of 2001. From early 2004 through August of 2006, J.B.W. lived with his mother in Clarksville, Tennessee. The putative father is a resident of Georgia and traveled to Tennessee approximately every three months to visit the child. On August 24, 2006, the mother filed a Petition to Establish Parentage and to Set Child Support in the Juvenile Court for Montgomery County. The father refused to accept service of the petition, and the trial court entered an order deeming the father served pursuant to Tenn. R. Civ. P. 4.05(5) on September 26, 2006. Shortly after the mother filed her petition, she and J.B.W. moved to Georgia.

On December 7, 2006, the father appeared pro se before the trial court at a docket call, and the case was set for a trial on the merits on May 30, 2007. The father subsequently retained counsel. On May 14, 2007, the father filed a motion to dismiss asserting that Georgia had jurisdiction over the matter rather than Tennessee. On June 6, 2007, the trial court entered an order holding that it had no personal jurisdiction to hear the child support matter. In addition, the trial court held that Montgomery County was an inconvenient forum under Tenn. Code Ann. § 36-6-222(a). The trial court specifically found that: 1) all the evidence that would be presented is in Georgia; 2) the distance between the parties' residences in Georgia is not inconvenient; and 3) Georgia is a more appropriate forum. The trial court did not dismiss the petition but rather directed the father to file an action in Georgia within ninety days or else the matter would be heard in Montgomery County. On July 13, 2007, the mother filed a motion requesting a Tenn. R. App. P. 9 interlocutory appeal on the issue of whether the trial court has personal jurisdiction over the father to decide parentage and/or to set a parenting plan and/or set child support where the father personally appeared in open court at the December 7, 2006 docket call. The trial court granted the mother permission to appeal on October 10, 2007.

II.

The Applicable Uniform Acts

The mother's petition requests that the trial court: 1) establish the parentage of J.B.W.; 2) establish the father's child support obligation and the amount of any arrearage owed; and 3) enter a parenting plan. Interstate jurisdictional questions involving child support and arrearage matters are governed by the Uniform Interstate Family Support Act ("UIFSA"), Tenn. Code Ann. § 36-5-

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[2] Tenn. Ct. App. R. 10 provides:

> The Court, with the concurrence of all judges participating in the case, may affirm, reverse or modify the actions of the trial court by memorandum opinion when a formal opinion would have no precedential value. When a case is decided by memorandum opinion, it shall be designated "MEMORANDUM OPINION," shall not be published, and shall not be cited or relied on for any reason in any unrelated case.

2001 et seq. Proceedings to determine parentage are also governed by the UIFSA. Tenn. Code Ann. § 36-5-2301(a)(6) and 2701. Interstate jurisdictional questions involving custody and visitation, on the other hand, are governed by the Uniform Child Custody Jurisdiction and Enforcement Act ("UCCJEA"), Tenn. Code Ann. § 36-6-201 et seq. "While a determination of paternity is covered under the Uniform Interstate Family Support Act, the custody and visitation aspects of paternity are custody proceedings." Tenn. Code Ann. § 36-6-205, *Comments to Official Text*. Thus the mother's request for an order establishing parentage and her request for child support are covered by the UIFSA. To the extent her request for a parenting plan includes issues of custody and visitation, however, that request is governed by the UCCJEA.

Personal Jurisdiction

The trial court determined that it did not have personal jurisdiction over the father to hear the child support matter. The bases for exercising jurisdiction over a nonresident in a proceeding to establish support are set forth in Tenn. Code Ann. § 36-5-2201. *Kljajic v. Kljajic,* No. M2002-01294-COA-R3-CV, 2003 WL 21954189, at 2 (Tenn. Ct. App. Aug. 15 , 2003) (No Tenn. R. App. P. 11 application filed). Tenn. Code Ann. § 36-5-2201 provides:

> In a proceeding to establish, enforce, or modify a support order or to determine parentage, a tribunal of this state may exercise personal jurisdiction over a nonresident individual or the individual's guardian or conservator if . . . (2) The individual submits to the jurisdiction of this state by consent, by entering a general appearance, or by filing a responsive document having the effect of waiving any contest to personal jurisdiction . . .

The statute is consistent with the general rule that a party who makes a general appearance and does not object to the court's personal jurisdiction will be deemed to have waived the party's objection. *Tennessee Dep't. of Human Serv's v. Daniel*, 659 S.W.2d 625, 626 (Tenn.Ct.App.1983). General appearances consist of acts from which it can reasonably be inferred that the party recognizes and submits itself to the jurisdiction of the court. *Patterson v. Rockwell Int'l*, 665 S.W.2d 96, 99-100 (Tenn. 1984). A general appearance may be made by the filing of pleadings or orally in open court. Any appearance that contests the merits of the complaint without raising the jurisdictional defense is deemed to be a general appearance. *P.E.K. v. J.M.*, 52 S.W.3d 653 (Tenn. Ct. App. 2001).

The father appeared in open court at the December 7, 2006 docket call during which the case was set for trial. There is no indication he raised any objection to the court's jurisdiction at that time. We conclude that the father appearing at the docket call and allowing the case to be set for a trial on the merits without objection to the trial court's jurisdiction constituted a general appearance whereby the father recognized the pendency of the suit and submitted himself to the jurisdiction of the court. The trial court thus has personal jurisdiction over the father.

Forum non Conveniens

Our determination that the trial court has personal jurisdiction over the father does not, however, end our inquiry. The trial court also determined, based on specific findings, that Montgomery County was an inconvenient forum for the petition under the relevant provision of the UCCJEA, Tenn. Code Ann. § 36-6-222(a). We find no grounds to reverse the trial court's determination under Tenn. Code Ann. § 36-6-222(a). Tenn. Code Ann. § 36-6-222(a), however, only applies to the portions of the mother's petition seeking a parenting plan, which involves issues of custody and visitation. The remaining portions of the mother's petition requesting a parentage determination and child support are governed by the UIFSA. The UIFSA contains no inconvenient forum provisions analogous to Tenn. Code Ann. § 36-6-222(a). Indeed, because the trial court has personal jurisdiction over the father, the action has lost its interstate character and much of the UIFSA does not apply. Tenn. Code Ann. § 36-5-2202; *LeTellier v. LeTellier,* 40 S.W.3d 490, 495 (Tenn. 2001). The general substantive and procedural laws of Tennessee do apply, however. *LeTellier v. LeTellier,* 40 S.W.3d at 495. Accordingly, the trial court could properly decline to exercise jurisdiction over the parentage and child support issues under the generally applicable doctrine of forum non conveniens.

The doctrine of forum non conveniens concerns the discretionary power of the court to decline to exercise jurisdiction when it appears the controversy may be more suitably or conveniently tried elsewhere. *Luna v. Sherwood,* 208 S.W.3d 403, 405 (Tenn. Ct. App. 2006). The courts of this state have the inherent power to apply the doctrine as a ground for refusal to exercise jurisdiction over a cause of action. *Zurick v. Inman*, 426 S.W.2d 767, 772 (Tenn. 1968). We find no reason why the doctrine should not apply in parentage and support cases.

The doctrine of forum non conveniens presupposes that the court has both personal and subject matter jurisdiction and that there is at least one other jurisdiction where the plaintiff may bring his cause of action. *Zurick v. Inman*, 426 S.W.2d at 771. The trial court had subject matter jurisdiction over the mother's petition under Tenn. Code Ann. § 36-2-307 at the time it was filed because both the mother and child resided in Montgomery County. The trial court did not lose subject matter jurisdiction over the petition just because the parties moved after the complaint was filed.[3] *See*, *Staats v. McKinnon,* 206 S.W.3d 532, 549 (Tenn. Ct. App. 2006) (holding that jurisdiction in a UCCJEA case attaches at the commencement of a proceeding). Because all the parties and the child now reside in Georgia, however, the courts of that state are an available forum for the mother to bring her cause of action.

The application of the doctrine of forum non conveniens is a matter of discretion with the trial court. Our review on appeal is limited to whether there has been an abuse of discretion. *In re Bridgestone/Firestone* 138 S.W.3d 202, 205 (Tenn. Ct. App. 2003). Although it may have relied

[3] We note also that because none of the parties remain in Tennessee, the courts of this state would not now have jurisdiction over a newly filed petition to set or amend support.

on Tenn. Code Ann. § 36-6-222(a), the trial court made specific findings which would support the application of the general doctrine of forum non conveniens. In light of those findings, we cannot conclude that the trial court abused its discretion when it determined that Montgomery County was an inconvenient forum and that Georgia would be a more appropriate forum to litigate this dispute. Moreover, because the custody and visitation issues will be decided in Georgia under Tenn. Code Ann. § 36-6-222(a), consideration of the parentage and child support issues in Tennessee would be particularly inappropriate.

III.

The Tenn. R. App. P. 9 application for permission to appeal is hereby granted. The portion of the trial court's order holding that it is without personal jurisdiction to hear the child support matter is reversed. The portion of the order finding Tennessee to be an inconvenient forum and allowing the father an opportunity to file an action in Georgia is affirmed. The case is remanded to the trial court for further proceedings consistent with this opinion. The costs are taxed one half to the father and one half to the mother and her surety for which execution may issue.

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PATRICIA J. COTTRELL, JUDGE